Supreme Court, U.S.
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No. 05-1576

In The

Supreme Court of the United States

OSCAR STILLEY,

Petitioner,

vs.

HONORABLE ROBERT HOLMES BELL, CHIEF JUDGE, RONALD C. WESTON, SR., CLERK, UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF MICHIGAN,

Respondents.

On Petition For A Writ Of Certiorari To The Sixth Circuit Court Of Appeals

PETITION FOR WRIT OF CERTIORARI

OSCAR STILLEY,
ATTORNEY AT LAW
2120 North B Street
Fort Smith, AR 72901
Arkansas Bar # 91096
(479) 573.0726 phone
(479) 573.0647 fax
oscar@oscarstilley.com

COCKLE LAW BRIEF PRINTING CO. (800) 225-6964
OR CALL COLLECT (402) 342-2831

QUESTION PRESENTED

Does the United States Constitution permit district courts to make local rules that contradict circuit precedent, and that furthermore operate to deprive criminal defendants of their choice of competent counsel licensed in other jurisdictions?

PARTIES TO THE PROCEEDING

Oscar Stilley, an attorney at law

There is technically no opposing party involved in the Sixth Circuit appeal. However, the parties involved in the underlying criminal case were the United States, as plaintiff, and Andrew Stuart Ouwenga, Karen Ann Ouwenga, and Judith Kay Cormier, a/k/a Judith Kay Waeghe as Defendants. Petitioner represented only Karen Ann Ouwenga.

The Honorable Robert Holmes Bell, Chief Judge of the Western District of Michigan, and Ronald C. Weston, Sr., clerk of the Western District of Michigan, were served with pleadings below.

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PETITION FOR WRIT OF CERTIORARI

Petitioner Oscar Stilley respectfully requests that a writ of certiorari be issued to review the judgment of the Sixth Circuit Court in this case.

OPINIONS BELOW

The November 23, 2005 unpublished opinion of the Sixth Circuit, affirming the three judge panel decision, is reproduced at Appendix 1. The January 28, 2004 judgment of the three judge panel in the Western District of Michigan, denying admission to the bar, is reproduced beginning at Appendix 18. The November 5, 2003 order of District Judge McKeague denying Petitioner pro hac vice admission is reproduced beginning at Appendix 39. The December 15, 2003 order appointing a three judge panel is reproduced beginning at Appendix 41. The March 9, 2006 order denying the petition for rehearing is reproduced beginning at Appendix 42. Therefore, the petition herein is due June 7, 2006.

STATEMENT OF JURISDICTION

Jurisdiction to appeal from the District Court to the Sixth Circuit Court of Appeals is found in 28 U.S.C. § 1291, for appeal from a final decision of the United States District Court. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1), for a petition for writ of certiorari to the Sixth Circuit Court of Appeals.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

US Constitution Amendment 5, providing that "No person shall . . . be deprived of life, liberty, or property without due process of law . . . "

US Constitution Amendment 14, providing that "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

US Constitution Amendment 14, providing that "Nor shall any state deprive any person of life, liberty, or property, without due process of law . . . "

STATEMENT OF THE CASE

Petitioner was retained by one Karen Ouwenga for the defense of charges of conspiracy, tax evasion, failure to appear before a grand jury for the purpose of providing handwriting exemplars and certain documents, and failure to appear before the Chief Judge of the Western District of Michigan for a hearing.

Petitioner has been sanctioned several times by the Arkansas Supreme Court. In addition, the Arkansas Supreme Court justices have maintained one set of accusations against Petitioner for the last four years. These justices have functioned as the accusers and deciders of these accusations, up to the present time.

In fact, t[illegible] have entered an order quashing a subpoena to the e[illegible]t of entering an order in the disciplinary proceeding over their own signatures despite their own express rule stating that such rulings will be made by the chair of the relevant panel of the Arkansas Supreme Court Committee on Professional Conduct. None of the justices serve as the chair of any panel. The order of sanctions, now on appeal, flatly states that many of the findings are the findings of the accusing justices rather than findings of the panel before which the charges were presented.

Despite those sanctions, Petitioner has been admitted to a total of 12 different bars, including three since the time of the application with respect to which this petition is made.

Petitioner was denied admission either pro hac vice or generally. A three judge panel was convened, the matter was heard, and an opinion written by the Chief Judge, denying Petitioner admission to the bar. Appendix 18. The cause was appealed to the Sixth Circuit, which affirmed in an unpublished opinion. Appendix 1. A petition for rehearing and rehearing en banc was denied. Appendix 42.

This petition is requested based upon one narrow ground for review. Are local rules that conflict with the caselaw of a circuit valid? Put another way, may one district court deny an attorney admission, where his services are desperately needed in a serious criminal case, using a test that is in irreconcilable conflict with binding case law of the circuit?

REASONS FOR GRANTING THE WRIT

1) The use of district court local rules to impose requirements for admission to a bar, which irreconcilably conflict with binding precedent of the circuit, violates the due process and equal protection rights of the attorney and those relying upon the attorney for legal representation.

The Sixth Circuit has cautioned against the denial of applications for admission where it appears that an ulterior motive for the denial exists. In the case below, Karen Ouwenga stood accused by indictment of among other things having disobeyed an order of the Chief Judge of the Western District of Michigan. This same Chief Judge was substituted in as the only district judge on a panel consisting of a magistrate, a bankruptcy judge,[1] and the Chief Judge.

As the Sixth Circuit said in *Application of Mosher*, 25 F.3d 397 (6th Cir. 1994):

> [12] The court must be mindful of the important interests at stake in a decision on admission to practice before the court. On the one hand, there are the interests of the applicant attorney in being able to practice his profession and the interests of clients in being represented by counsel of their choosing. "[T]he profession of an attorney is of great importance to an individual, and the prosperity of his whole life may depend on its exercise. The right to exercise it ought not to be lightly or capriciously taken from him."

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[1] Rule 57, reproduced in pertinent part hereinafter, specifically authorizes senior judges and magistrate judges to sit on the panel, but not bankruptcy judges.

> *Burr*, 22 U.S. (9 Wheat.) at 530, 6 L.Ed. 152. As to the client's interest, it is particularly strong in a situation such as this where the attorney seeks admission because a client already has chosen him to represent her in that court. On the other hand, the public interest requires the court to consider whether the applicant attorney will promote the administration of justice. "[I]t is extremely desirable that the respectability of the bar should be maintained, and that its harmony with the bench should be preserved." Id. Thus, a district court should consider whether the applicant attorney possesses the professional and ethical competence expected of an officer of the court. G.L.S., 745 F.2d at 859. **We hold that only the strongest evidence of unfitness can justify a denial of admission where, as here, a litigant's opponent, by objecting to the admission of the litigant's attorney, seeks to deprive the litigant of chosen counsel who previously has proven successful in similar cases.**

(Emphasis added)

Who could possibly have the burden of proof under that test? The burden is necessarily upon the opponent, or at least upon some person other than the challenged attorney, licensed and otherwise qualified to practice law in one or more other jurisdictions. What practicing attorney would present "the strongest evidence of unfitness" against himself?

The District Court, the three judge panel, and the Sixth Circuit placed the burden of proof to Petitioner, on the

theory that Local Criminal Rule 57.1(m)(iii)[2] controls. This provision is not only contrary to the dictates of *In re Mosher*, it is also totally inapplicable to the case at bar.

First, the provision discusses the imposition of discipline reciprocal to that of another jurisdiction in which an attorney is admitted while a member of the Western District of Michigan. Subsection (iii) provides:

> (iii) Reinstatement after expiration of discipline
>
> (A) An attorney may apply for **reinstatement** by filing an ***affidavit of reinstatement*** stating that the jurisdiction that entered the underlying order of discipline has reinstated the attorney. The Chief Judge shall assign such applications to a panel of three judicial officers consisting of at least one active district judge. The other members of the panel may include senior judges and magistrate judges. Any judge who initiated the request for discipline or before whom the allegation giving rise to request for discipline took place shall not be appointed to the panel. A decision of the majority of the three judge panel shall be final and binding.

(Emphasis added)

Simply put, Petitioner was not seeking reinstatement. Petitioner did not file an "affidavit of reinstatement." The reliance on Local Criminal Rule 57.1(m)(iii) to shift the *Mosher* burden from the opponent to the Petitioner is misplaced.

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[2] The Local Civil Rule has similar terms.

A further reading of the provisions of Local Criminal Rule 57.1(m)(iii) render the application of this provision to criminal defense lawyer seeking pro hac vice admission, or general admission for the purpose of participating in a specific criminal case, clearly erroneous. The provision also requires:

> (B) The judicial officers assigned to the matter shall within 30 days after assignment schedule a hearing at which **the attorney shall have the burden of demonstrating by clear and convincing evidence that**:
>
> (1) the attorney has complied with the orders of discipline of this Court and all other disciplinary authorities;
>
> (2) the attorney has not practiced in this Court during the period of disbarment or suspension and has not practiced law contrary to any other order of discipline;
>
> (3) the attorney has not engaged i. any other professional misconduct since disbarment or suspension;
>
> (4) the attorney has the moral qualifications, competency and learning in the law required for admission to practice law before this Court; and
>
> (5) the attorney's resumption of the practice of law will not be detrimental to the integrity and standing of the bar or to the administration of justice, or subversive of the public interest.

(Emphasis added)

The only one of these provisions that might possibly make sense with respect to a pro hac vice application, or

general application for a specific case, is paragraph 4. However, this requirement is well established in the instant case by the fact that the Petitioner has been granted general admission in 12 bars, including three after the denial in Michigan.

In *U.S. v. McGahee*, 257 F.3d 520, 530 (6th Cir. 2001) the Court said: "A district court abuses its discretion if its decision is based on an error of law or a clearly erroneous factual finding."

Petitioner filed an original application, exactly like *Mosher*. The claims that Petitioner's circumstances or skill is materially different from Mosher's is at best a distinction without a difference, at worst an attempt to deprive a criminal defendant of her choice of counsel in contravention of the rules and precedent of the Sixth Circuit.

Petitioner has considerable experience in the defense of federal tax charges and related charges. This is a particularly difficult area of law, yet Petitioner had been able to obtain defeat a charge of felony conduct in a tax case, prior to submission to the jury, leaving the client with only misdemeanors. Subsequent to the denial of admission in Michigan, the government dismissed in its entirety, with prejudice, a six count indictment for tax evasion and wilful failure to file tax returns, in a case in which Petitioner was sole legal counsel for the defendant.

Petitioner cannot boast of perfect success, nor can other attorneys who defend a substantial cross section of federal criminal tax cases. The Department of Justice is careful and thorough in its selection and prosecution of tax cases, and total wins, such as the one recently described, are relatively rare. But Petitioner's record was sufficient

that Karen Ouwenga was desirous of his services, notwithstanding the substantial additional costs involved in retaining out of state counsel.

The bars of which Petitioner is a member, and the dates of admission, are set forth below.

Jurisdiction	**Date admitted**
Arkansas Supreme Court	April 15, 1991
Western and Eastern Districts of Arkansas	June 25, 1991
Central District of Illinois	June 6, 2002
Northern District of Oklahoma	April 13, 2001
Northern District of Florida	February 23, 2005
4th Circuit Court of Appeals	February 7, 2006
6th Circuit Court of Appeals	February 4, 2004
7th Circuit Court of Appeals	April 30, 2003
8th Circuit Court of Appeals	October 13, 1993
9th Circuit Court of Appeals	May 2, 2005
10th Circuit Court of Appeals	August 8, 2003
11th Circuit Court of Appeals	January 23, 2001

Petitioner was admitted to the bar of the Sixth Circuit about a week after the opinion of the Chief Judge, denying admission on panel review. Yet the panel[3] opinion at page 12 suggests that the admission of Petitioner to a bar would amount to "effectively lowering the standard to which it holds all attorneys who appear before it." This comment is uncomplimentary not only to the Sixth Circuit but also to the three other courts that have admitted Petitioner subsequent to his disciplinary matters in 2001.

Petitioner submitted a letter from the Honorable Chief Judge Claire Eagan, United States District Judge

[3] Petitioner was requested but was denied any evidence concerning the votes of the other panel members.

for the Northern District of Oklahoma, in which she stated that Petitioner had "at all times conducted yourself ably, professionally, and within the applicable rules and rulings of the Court." Appendix 13. Judge Eagan's letter was not mentioned at all in Judge Bell's opinion.

The Sixth Circuit acknowledged the letter, and the successful admissions and practice in other jurisdictions, but said that, in essence, each district court can make its own rules. Appendix 14.

In *Rinaldi v. Yeager*, 384 U.S. 305, 308 (1966) the Court said:

> The Equal Protection Clause requires more of a state law than nondiscriminatory application within the class it establishes. *McLaughlin v. Florida*, 379 U.S. 184, 189-190. It also imposes a requirement of some rationality in the nature of the class singled out. To be sure, the constitutional demand is not a demand that a statute necessarily apply equally to all persons. "The Constitution does not require things which are different in fact . . . to be treated in law as though they were the same." *Tigner v. Texas*, 310 U.S. 141, 147. Hence, legislation may impose special burdens upon defined classes in order to achieve permissible ends. But the Equal Protection Clause does require that, in defining a class subject to legislation, the distinctions that are drawn have "some relevance to the purpose for which the classification is made." *Baxstrom v. Herold*, 383 U.S. 107, 111; *Carrington v. Rash*, 380 U.S. 89, 93; *Louisville Gas Co. v. Coleman*, 277 U.S. 32, 37; *Royster Guano Co. v. Virginia*, 253 U.S. 412, 415.

Petitioner brings petition for the purpose of ascertaining whether due process or equal protection is violated when a client and lawyer in one judicial district may be deprived of valuable and fundamental substantive legal rights, when a lawyer and client just across the border, in the same circuit, has those same valuable rights maintained inviolate.

Petitioner is not per se opposed to local rules. However, any local rule that abridges a substantive right published to the citizenry in a judicial opinion should not be upheld. Changes in the law affecting substantive rights should take place, on the federal level, on a circuit by circuit basis, at most, and never district by district. The right to counsel, and the concomitant right of an attorney to practice, should be uniformly respected throughout a circuit.

Furthermore, a circuit opinion that materially alters the rules for admission in one district court should at the very least be published, so that other attorneys may at least learn of significant opinions bearing upon their rights to petition for admission in that district.

CONCLUSION

The local rules of the Western District of Michigan are squarely in conflict with the caselaw of the Sixth Circuit. Petitioner respectfully requests this court to grant the writ in order to resolve the conflict in this case, and also to answer the more general question of whether or not a local rule may transcend general legal principles otherwise

applicable within a judicial circuit, in a manner as to deprive individuals of substantive legal rights.

Respectfully submitted,

By: OSCAR STILLEY,
ATTORNEY AT LAW
2120 North B Street
Fort Smith, AR 72901
Arkansas Bar # 91096
(479) 573.0726 phone
(479) 573.0647 fax
oscar@oscarstilley.com

APPENDICES

NOT RECOMMENDED FOR FULL-TEXT PUBLICATION
No. 04-1283
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

IN RE: OSCAR RAMOS STILLEY *Appellant-Petitioner* v. HONORABLE ROBERT HOLMES BELL, CHIEF JUDGE, RONALD C. WESTON, SR CLERK, UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF MICHIGAN *Respondents*	On Appeal from the United States District Court for the Western District of Michigan (Filed Nov. 23, 2005)

Before: NELSON, Circuit Judge; BATCHELDER Circuit Judge; and O'MALLEY, District Judge.*

O'MALLEY, J. This appeal is from an order denying an attorney's petition for admission to the bar of the United States District Court for the Western District of Michigan. Appellant, attorney Oscar Stilley ("Stilley"), petitioned for pro hac vice admission to the district court's bar for the purpose of representing Karen Ouwenga, a defendant in a criminal matter involving allegations of federal income tax fraud. Stilley's petition for pro hac vice admission ("pro hac petition") initially was denied by the Honorable Gordon J. Quist based on Stilley's past violations of the Arkansas Rules of Professional Conduct. Pursuant to the applicable local rules, Stilley requested a

* The Honorable Kathleen O'Malley, United States District Judge for the Northern District of Ohio, sitting by designation.

hearing before a three-judge panel to review the denial of his pro hac petition. Stilley's pro hac petition also was denied by the panel. He then filed this timely appeal, arguing that: (1) he was deprived of his right to have a three-judge panel review his pro hac petition because there is no evidence that two of the judges concurred with the opinion, (2) he was wrongly assigned the burden of proving his fitness to practice, (3) the district court's decision was erroneous on the merits, and (4) the district court improperly refused to accept certain documents that he submitted for filing.

For the reasons set forth below, we **AFFIRM** the district court's denial of Stilley's petition for admission to the bar of the Western District of Michigan.

I. BACKGROUND

Stilley petitioned for pro hac vice admission, pending general admission, to the United States District Court for the Western District of Michigan, in order to represent Karen Ouwenga, who, according to Stilley, sought his representation in a matter involving allegations of federal income tax fraud. Assistant United States Attorney Donald A. Davis, the prosecutor in the Ouwenga case, did not concur in Stilley's pro hac petition, and directed a letter to the district court concerning Stilley's disciplinary record in Stilley's home state of Arkansas.

On November 5, 2003, the Honorable Gordon J. Quist denied Stilley's pro hac petition, finding that Stilley's "past actions are inconsistent with the standards of professional conduct this Court requires of attorneys practicing in this district." (Joint Appendix ("JA") 118.) Judge Quist relied on four separate Findings and Orders entered by the Arkansas

Supreme Court Committee on Professional Conduct in 2001. These findings consisted of a Caution, two Reprimands, and a thirty (30) day Suspension that Stilley received as a result of approximately twenty (20) violations of the Arkansas Model Rules of Professional Conduct. Some of the most egregious violations cited by Judge Quist include "pursuing an appeal, contrary to a client's wishes, and continuing to pursue the appeal after entry of an order terminating the representation," "failing to convey a settlement offer to a client," and "knowingly disobeying the rules of a tribunal." (JA 118-19.)

Pursuant to Rule 57.1(c)(ii) of the Western District of Michigan's Local Rules of Criminal Practice and Procedure, Stilley requested review of Judge Quist's decision by a three-judge panel. He received a hearing before a panel consisting of Chief District Judge Robert Holmes Bell, Bankruptcy Judge Jo Ann Stevenson, and Magistrate Judge Hugh Brenneman. Following that hearing, the panel also denied Stilley's pro hac petition in a written opinion signed by Judge Bell on January 28, 2004. The panel relied on the Arkansas disciplinary sanctions, a May 2002 order by the Arkansas Supreme Court striking a brief submitted by Stilley for "strident disrespectful language," and the panel's own concern "with what appears to be petitioner's lack of understanding and/or disregard of precedent." (JA 11-16.)

On February 10, 2004, almost two weeks after the panel's decision, Stilley filed a "Motion for Confirmation of the Votes of Panel Members Who Have Not Signed the Opinion of Judge Bell" and a "Motion to Add Certain Documents to Complete the Record," the latter of which was accompanied by documents Stilley wished to add to

the record. According to Stilley, these motions were "unified" at the direction of Judge Bell.[1]

On February 23, 2004, Stilley filed a timely notice of appeal.

II. ANALYSIS

On appeal, Stilley argues that the district court[2] erred in denying him admission to the bar of the Western District of Michigan for four reasons: (1) he was deprived of his right to have a review by a three-judge panel because, according to Stilley, there is no evidence that two of the judges on the panel concurred with the written opinion, (2) he was wrongly assigned the burden of proving his fitness to practice, (3) the district court's decision was incorrect on the merits, and (4) the district court improperly refused to accept his two post-decision motions.

A federal district court has the "inherent authority" to deny an attorney's application for admission to practice before that court. *Application of Mosher*, 25 F.3d 397, 399-400 (6th Cir. 1994); *see also In re Snyder*, 472 U.S. 634, 643 n.6 (1985). Accordingly, the exercise of the authority to admit, deny, or suspend an attorney is left to the discretion of the district court. *In re Snyder*, 472 U.S. at 643 n.6; *Application of Mosher*, 25 F.3d at 400 (citing *Ex parte Burr*, 22 U.S. (9 Wheat.) 529, 530 (1824)). Therefore, this Court

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[1] Stilley also filed a petition for a writ of mandamus to direct Judge Bell and the Clerk of Courts to file his motions. The mandamus petition was consolidated with this present appeal, and was subsequently denied on the ground that relief may be sought by direct appeal.

[2] We will refer to the three-judge panel as the "district court" and the "panel" interchangeably.

reviews a denial of an application for admission to practice before a district court for abuse of discretion. *Application of Mosher*, 25 F.3d at 400.

This Court previously has noted the competing interests at stake in a decision to admit an attorney to practice before a district court. *See id.* On the one hand are the attorney's interest in practicing his or her chosen profession, and the client's interest in being represented by the client's chosen attorney. *Id.; see also Ex parte Burr*, 22 U.S. (9 Wheat.) 529, 530 (1824). These interests are more compelling when, as in Stilley's case, the client already has chosen a particular attorney to represent him or her in court. *Id.* On the other hand, "the public interest requires the court to consider whether the applicant attorney will promote the administration of justice," and whether the applicant "possesses the professional and ethical competence expected of an officer of the court." *Id.*

In addition, "[t]he perogative [sic] of a trial judge to exclude out-of-state counsel, like the right of a defendant to be represented by the counsel of his choice, is not an absolute right" *Ross v. Reda*, 510 F.2d 1172, 1173 (6th Cir. 1975). With these interests in mind, we will now address Stilley's arguments that the district court abused its discretion when it denied his pro hac petition.

A. Three-Judge Panel

Stilley first argues that the denial of his petition was not actually reviewed and denied by a majority of the three-judge panel because only one judge signed the opinion. It is undisputed that Stilley had a right to a

review of Judge Quist's original denial of his petition before a three-judge panel,[3] and it is undisputed that Stilley did in fact receive such a review, Stilley contends, however, that Judge Bell authored and signed the opinion alone, without the concurrence of Judge Stevenson and Magistrate Judge Brenneman. Therefore, Stilley argues, the decision was not reached by "the majority of the panel" as required by Local Civil Rule 83.1(m)(iii). Indeed, one of Stilley's post-judgment motions was for "written and signed confirmation" of the votes and opinions of the other two members of the panel. (JA 105.)

We find Stilley's argument to be without merit. Judge Bell, Judge Stevenson and Magistrate Judge Brenneman were all present at the hearing to review Stilley's petition. (JA 21-104.) It is axiomatic that judges on a panel concur with the panel's opinion unless otherwise noted. Each judge need not separately sign the opinion to reflect his or her agreement, and each judge certainly is not required to provide petitioners with a "written and signed confirmation" of his or her concurrence. Absent affirmative proof that the other judges took no part in the opinion, none of which has been put forward by Stilley, we will not presume that the opinion was not unanimous. Therefore, we

[3] Rule 57.1(c)(ii), Local Rules of Criminal Practice and Procedure, Western District of Michigan, provides that "[a]n applicant dissatisfied with the decision of the Chief Judge may within thirty (30) days file a petition before a three judge panel as described in LCivR 83.1(m)(iii)." Western District of Michigan Local Civil Rule 83.1(m)(iii) provides that the "Chief Judge shall assign such applications to a panel of three judicial officers consisting of at least one active district judge. The other members of the panel may include senior judges and magistrate judges . . . A decision of the majority of the three judge panel shall be final and binding."

find that Stilley was not denied his right to a hearing before a three judge panel.

B. Burden of Proof

Stilley also argues that the district court improperly assigned him the burden of proving his fitness to practice. The district court placed the burden on Stilley pursuant to Rule 57.1(m)(iii)(B) of the district court's local criminal rules,[4] which provides that "the attorney shall have the burden of demonstrating by clear and convincing evidence" five particular requirements of good behavior laid out in the rules (discussed below) that demonstrate fitness to practice.

Stilley argues that the district court abused its discretion by placing the burden on him. For this argument, he relies primarily on *Application of Mosher,* 25 F.3d 397, 400 (6th Cir. 1994), where the Sixth Circuit held that "only the strongest evidence of unfitness can justify a denial of admission, where, as here, a litigant's opponent, by objecting to the admission of the litigant's attorney, seeks to deprive the litigant of chosen counsel who previously has proven successful in similar cases." Stilley argues that *Mosher* applies to this case because the prosecutor in this case, according to Stilley, similarly seeks to deprive Stilley's client, Karen Ouwenga, of her chosen counsel, and therefore, only the "strongest evidence of unfitness" can justify a denial of admission. Stilley contends that the reasoning of *Mosher* is applicable because he has proven successful in similar cases in that he has considerable

[4] A parallel provision is found in the district court's local civil rules, Rule 83.1.

practice in defense of federal tax charges and related cases, including a defeat of a charge of felony conduct in a tax case. Because of *Mosher* and because of his legal record, Stilley contends that the burden is properly placed on the *challenger* of the applicant attorney to produce the "strongest evidence of unfitness."

We disagree with Stilley and find *Mosher* inapposite for several reasons. First, unlike Stilley, the applicant attorney in *Mosher* had not been disciplined in another jurisdiction. Accordingly, the burden of proof provided in Rule 57.1(m)(iii), which falls under the subheading "Discipline by Other Jurisdiction," did not apply to that attorney's petition.[5] Moreover, the attorney in that case, Mr. Mosher, had already successfully litigated the *same* types of cases (products liability) concerning the *same* subject matter (the prescription drug Halcion) against the *same* defendant (Upjohn). *Application of Mosher*, 25. F.3d at 398. The challenge to Mr. Mosher's admission, therefore, arguably involved ulterior motives.

We do not find that Stilley's case presents the same situation where a "litigant's opponent . . . seeks to deprive the litigant of chosen counsel who previously has proven successful in similar cases." *Id.* Stilley makes a brash and unsupported claim that there are ulterior motives in this case to deny his petition, alleging that Judge Bell and Assistant United States Attorney Donald Davis "travel to various places to speak concerning methods of 'dealing with' persons whose opinions of the proper interpretation

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[5] *Mosher* also arose from a petition for admission to the bar of the United States District Court for the Western District of Michigan, and, therefore, the same local rules would have applied. *Application of Mosher*, 25 F.3d at 398.

of various tax laws fail to conform to the opinions of Davis and Bell." (Appellant's Br. at 16.) He further suggests that their conduct "gives rise to serious ethical considerations," and that "[w]here the judge publicly announces his views on tax issues, and then presides over criminal prosecutions of persons with unconventional or unofficial views of one or more of the tax laws, the public perception is likely to be less than scrupulous impartiality in the judicial proceedings." (Appellant's Br. at 16.) Stilley provides no factual support for these spurious assertions however. There is simply no indication in the record that Stilley's petition was denied for any reason other than his extensive disciplinary record.

Because circumstances surrounding the applicant attorney in *Mosher* are significantly different than those presented here, we find that the holding of that case is not applicable. Therefore, the district court did not abuse its discretion in following its own local rules and placing the burden on Stilley to prove his fitness to practice law.

C. Merits of the Decision

Rule 57.1(m)(iii)(B) of the district court's local criminal rules provides that "the attorney shall have the burden of demonstrating by clear and convincing evidence that:

(1) the attorney has complied with the orders of discipline of this court and all other disciplinary authorities;

(2) the attorney has not practiced in this court during a period of disbarment or suspension and has not practiced law contrary to any other order of discipline;

(3) the attorney has not engaged in any other professional misconduct since disbarment or suspension;

(4) the attorney has the moral qualifications, competency and learning in the law required for admission to practice law before this Court; and

(5) the attorney's resumption of the practice of law will not be detrimental to the integrity and standing of the bar or to the administration of justice, or subversive of the public interest.

1. *Findings of the District Court*

The district court held that Stilley failed to meet his burden of demonstrating the fifth requirement, that, despite his long list of professional rule violations, his practice of law in that district would not be detrimental to the integrity and standing of the bar or to the administration of justice, or subversive of the public interest.

The district court based its conclusion on several factors. The district court concluded that Stilley had failed to show that his admission would not be damaging to the integrity and standing of the bar, based on his apparently unprecedented number of violations of the Model Rules of Professional Conduct,[6] which culminated in a Caution, two Reprimands, and a thirty (30) day Suspension. Admission of an applicant who has failed to conform to the standards

[6] The district court remarked that, "[f]rankly, the members of the panel cannot recall any other applicant to the bar of this court having had anything approaching twenty rule violations." (JA 13.)

of professional conduct, the district court reasoned, would set a bad example for the present members of the bar. Further, the district court found that Stilley had not shown that his admission would not be detrimental to the administration of justice, noting that many of his previous violations might present grounds for a claim of ineffective assistance of counsel if repeated in the criminal matter for which he seeks admission.[7]

In addition, the district court noted that, since Stilley's suspension in 2001, the Arkansas Supreme Court has stricken from the record a 70-page brief submitted by Stilley for the "strident, disrespectful language used in his pleadings, motions, and arguments, and his repeated refusal to recognize and adhere to precedent." (JA 15.) The Arkansas Supreme Court noted that "Stilley's brief is an inexcusable breach of obligation of professional conduct that this court expects of the members of the bar," and that "Stilley's intemperate and distasteful language spread throughout all of his brief" (JA 15.) Finally, the district court noted its concern "with what appears to be petitioner's lack of understanding and/or disregard of precedent." Overall, the district court concluded that "Stilley has not demonstrated over an adequate period of time that these problems are truly a thing of the past rather than part of a continuing pattern of behavior." (JA 17.)

All of these findings find full support in the record before the district court.

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[7] The district court cited Stilley's past violations for failure to file a record in a timely manner, filing a frivolous appeal, acting as an advocate despite a conflict of interest, and not keeping his client informed of the status of litigation.

2. *Stilley's Arguments*

Stilley argues that the district court abused its discretion in denying his pro hac petition because many of his ethical violations were "unfair" or "petty," the court failed to properly consider that other jurisdictions have received Stilley favorably since his suspension, and because a criminal litigant was denied her chosen counsel through the court's action.[6] We conclude that none of these arguments compel a finding that the district court abused its discretion, and, therefore, do not warrant reversal of the district court's order.

First, Stilley's arguments that many of his violations are "unfair" or "petty" are not appropriately raised in this forum. As the district court noted, "[p]etitioner agreed that it is not the function of this panel to re-evaluate the merits of the disciplinary actions taken against him in his home jurisdiction." (JA 12.) Further, Stilley did not appeal the findings of the Arkansas authorities. Therefore, we believe that those matters should not be re-litigated here, and we will not consider arguments regarding the merits of prior disciplinary findings of the Arkansas Supreme Court Committee on Professional Conduct.

Second, Stilley argues that the district court erred in failing to consider that other jurisdictions have admitted

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[6] Stilley also argues that the district court erroneously accused him of pursuing further "litigation" regarding a specific matter in violation of a court order. In fact, Stilley argues, he has only made a report of suspected perjury to the Arkansas Supreme Court Committee on Professional Conduct, which is not "litigation." While Stilley appears to be splitting hairs on this point (always a concern when discussing matters of ethics), because this finding is peripheral to the district court's opinion, we will not address it.

him to practice since the occurrence of his recent disciplinary troubles, and that one federal judge, at Stilley's request, has written him a letter of recommendation. Specifically, Stilley argues that the district court failed to mention a January 2004 letter from the Honorable Claire Eagan, United States District Court for the Northern District of Oklahoma, Judge Eagan's letter is not a letter of recommendation to the Western District of Michigan, however; it is a general letter indicating that *if* anyone should ask for a letter of recommendation, Judge Eagan would write that Stilley conducted himself "ably, professionally, and within the applicable rules and rulings of the court." (JA 113.) The letter *was* discussed at Stilley's hearing before the three-judge panel, moreover, with copies provided to each judge. (JA 23-24.) It is not true *that* the letter was not considered; it simply was not persuasive to the panel. In addition to the letter, Stilley also explained in his brief to this Court and before the district court panel that, since 2001, he has been admitted to practice before the Central District of Illinois, the Seventh Circuit Court of Appeals, and the Tenth Circuit Court of Appeals.

Although the letter from Judge Eagan demonstrates Stilley's good behavior in another federal district court, and although other courts have admitted Stilley to practice in their jurisdictions, those facts do not compel the conclusion that the Western District of Michigan abused its discretion in not allowing Stilley to practice there. As the United States Supreme Court noted, "[f]ederal courts admit and suspend attorneys as an exercise of their inherent power." *In re Snyder,* 472 U.S. 634, 643 n.6 (1985). Each district court possesses discretion to exercise that inherent authority, and one court's decision to admit

an applicant does not diminish another court's discretion to refuse to do so.

Rule 83 of the Federal Rule of Civil Procedure provides that "[e]ach district court . . . may . . . make and amend local rules governing its practice." Fed. R. Civ. P. 83. Pursuant to Rule 83, the Western District of Michigan has adopted local rules of practice, and its bar admission requirements may be different from the other jurisdictions cited by Stilley. For example, Rule 57.1(c)(iii) of the Western District of Michigan's local criminal rules provides that "[t]his court disfavors pro hac vice admission and prefers that all lawyers appearing before it become full members of the bar of the Court. Pro hac vice admission may nevertheless be allowed on a temporary basis pending full admission, or in unusual circumstances."[9] Stilley admitted in his hearing that one jurisdiction in which he had represented a client did not require attorneys to be admitted to represent criminal defendants. (JA 26-27.) In response, Judge Brenneman properly asked, "How does that pertain to what you are doing here today? We do have a rule that you have to be admitted." Put simply, the evidence of Stilley's admission to practice in other jurisdictions does not necessarily compel the Western District of Michigan to admit him. Therefore, the district court in this case did not abuse its discretion in denying Stilley's petition, whether or not he has practiced in other jurisdictions since his 2001 disciplinary violations.

Finally, Stilley indirectly raises a Sixth Amendment concern that, although not specifically framed as such in

[9] In this case, Stilley sought admission pro hac vice pending an application for full admission.

his brief, was addressed by the district court and warrants some discussion here. In the context of the burden placed on Stilley to demonstrate his fitness, he argues that *Mosher* applies because his client is being deprived of her choice of counsel, Stilley argues that the district court opinion "cobbles together" language from several circuit court opinions "to create the appearance that a trial court may override a client's choice of counsel for virtually any reason, on grounds that the choice might 'interfere with the orderly administration of justice.'" (Appellant's Br. at 15). While we disagree with Stilley's characterization of that portion of the district court's opinion, his point that his client's right to choice of counsel impacts the district court's decision is worthy of discussion.[10]

The Sixth Amendment in relevant part, provides that "[i]n all criminal prosecutions, the accused shall enjoy the right . . . to have the assistance of counsel for his defense." Although this right "implies a degree of freedom to be represented by counsel of defendant's choice, this guarantee does not grant the unconditional right to representation . . . by a particular out-of-state attorney," *Ross v. Reda,* 510 F.2d 1172, 1173 (6th Cir. 1975). The Fifth Circuit has recognized a balance between a court's discretion to determine who shall practice before it, and the Sixth Amendment's requirement that a court must respect a defendant's choice of counsel. *See United States v. Dinitz,*

[10] We do not read this argument as an assertion by Stilley of his client's Sixth Amendment rights, for which he certainly would lack standing. This argument, to the extent it is raised, is relevant to the merits of the decision by the district court to deny *Stilley's* petition to practice before the court, i.e., that his petition is more compelling by virtue of the fact that a criminal defendant has chosen him to represent her before the court.

538 F.2d 1214, 1219 (5th Cir. 1976). The Fifth Circuit concluded that "the Sixth Amendment's right to choice of counsel merely informs judicial discretion, it does not displace it." *Id.* We find the Fifth Circuit's assessment sound.

In this case, the district court gave thorough consideration to implications of Stilley's client's Sixth Amendment rights. The district court concluded that "a criminal defendant's preference for a particular attorney does not mandate this court to disregard its reasonable bar admission requirements." (JA 17.) We believe that this conclusion is in accord with relevant case law. *See Ross v. Reda,* 510 F.2d 1172, 1173 (6th Cir. 1975) (holding that a defendant's Sixth Amendment rights were not violated when a state court denied a pro hac vice application because the attorney affirmatively refused to limit his out of court statements, in violation of the Code of Professional Responsibility); *see also United States v. Dinitz,* 538 F.2d 1214, 1219 (5th Cir. 1976) (finding that the Sixth Amendment right to choice of counsel must be limited because to hold otherwise would "necessarily condemn, for example, even local bar admission requirements"). Given Stilley's extensive list of disciplinary violations, and considering the district court's reasonable concern that such violations potentially could lead to a claim for ineffective assistance of counsel, we think the district court acted within the scope of its discretion in denying Stilley's pro hac petition despite the Sixth Amendment issues involved.

D. Refusing to Accept Post-Order Filings

Stilley's final argument is that the district court erred in "unfiling" the motions and documents he filed on

February 10, 2004, two weeks after the panel denied his petition for admission. On that date, Stilley filed a "Motion for Confirmation of the Votes of Panel Members Who Have Not Signed the Opinion of Judge Bell" and a "Motion to Add Certain Documents to Complete the Record," the latter of which was accompanied by documents Stilley wished to add to the record. The district court took no action with regard to these filings, and, according to Stilley, "unfiled" them. We find that the district court did not err in refusing to respond to these motions.

First, because the filings came two weeks after the panel issued its decision, there was no active matter pending before the district court. In addition, the documents Stilley filed to supplement the record could have been no use to the district court because its decision had already been made. The issues raised in those motions should have been raised in this appeal. In fact, they eventually were raised in this appeal. In any event, Stilley was not prejudiced by the "unfiling" because this Court allowed him to supplement the record here with the very documents he attempted to file with the district court. We find, therefore, that the district court did not abuse its discretion in refusing to accept the post-order filings.

III. CONCLUSION

For the reasons just stated, the district court's denial of Stilley's petition for admission to the bar of the United States District Court for the Western District of Michigan is **AFFIRMED**.

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

IN RE: Petition for Admission of Oscar Amos Stilley /

(Filed Jan. 28, 2004)

OPINION

Pending before the court is the Petition of Oscar A. Stilley for Admission to practice law in the Western District of Michigan. The Petition was initially reviewed by the Honorable Gordon J. Quist pursuant to W.D. Mich. LCrR57.1, who denied the Petition. Pursuant to Rule 57.1, a dissatisfied applicant may file a petition for a hearing before a three-judge panel. Petitioner sought review and a three-judge panel was appointed by the Court. A hearing on the petition for admission was held on January 12, 2004, and the issue is now before the panel for decision.

Background

In denying Mr. Stilley's petition, Judge Quist pointed out that the petitioner's past actions were "inconsistent with the standards of professional conduct this Court requires of attorneys practicing in this district, towards clients, counsel and the Court." In support of this finding, Judge Quist relied primarily but not entirely on four separate Findings and Orders entered by the Arkansas Supreme Court Committee on Professional Conduct (the "Committee") during 2001, pertaining to Mr. Stilley. Each of these orders, in turn, discusses a number of violations of the Arkansas Model Rules of Professional Conduct found to have been committed by the petitioner. The four Orders

and the violations contained within them are summarized below:

On August 14, 2001, the Arkansas Supreme Court Committee on Professional Conduct in a Findings and Order CAUTIONED the petitioner for his conduct in committing at least four violations of the Arkansas Model Rules of Professional Conduct ("Model Rules").

> First, the Committee Found that Mr. Stilley violated Model Rule 1.3, which requires that a lawyer act with reasonable diligence and promptness in representing a client, when he knew that a record of lower court proceedings was due to be filed with the Arkansas Supreme Court on or before December 19, 2000, and failed to have the record filed in a timely manner.
>
> Second, the Committee also found that Mr. Stilley violated Model Rule 3.1, which requires in pertinent part that a lawyer not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis for doing so that is not frivolous, when the Arkansas Supreme Court found his Petition for Rehearing of Motion for Rule on the Clerk to be argumentative and devoid of any legal or factual basis for reversing a previous decision of the Court.
>
> Third, the Committee also found that Mr. Stilley violated Model Rule 3.2, which requires that a lawyer make reasonable efforts to expedite litigation consistent with the interests of the client, when he failed to accept responsibility in having the transcript of the lower court proceedings filed in a timely manner causing unnecessary delay to his client's case.

> Fourth, the Committee also found that Mr. Stilley violated Model Rule 8.4(d), which requires that a lawyer not engage in conduct that is prejudicial to the administration of justice, when he refused to accept responsibility in a December 28, 2000 Motion for Rule on the Clerk knowing the Arkansas Supreme Court requires an acceptance of responsibility on the moving party in Motions for Rule on the Clerk.
>
> The Committee apparently again found Mr. Stilley in violation of this same rule when he failed to accept responsibility in a February 6, 2001 Motion for Rehearing of Motion for Rule on the Clerk, knowing that the Arkansas Supreme Court requires an acceptance of responsibility on the moving party in Motion for Rule on the Clerk.

Committee Docket No. 2001-037.

On September 17, 2001, petitioner was REPRIMANDED by the Committee for three more violations of the Model Rules.

> First, the Committee found that Mr. Stilley violated Model Rule 3.1, which requires that a lawyer not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis for doing so that is not frivolous, which includes a good-faith argument for an extension, modification or reversal of existing law, when he continued to pursue issues in his appeal in a matter entitled *Stilley v Hubbs*, even though the Supreme Court had handed down a controlling opinion in another appeal, *Stilley v Henson,* contrary to Mr. Stilley's position on the same issues, and when the Arkansas Supreme Court found that by continuing to pursue the *Hubbs* appeal,

he was continuing with a frivolous appeal in violation of Rule 11 of the Rules of Appellate Procedure – Civil.

Second, the Committee also found that Mr. Stilley's conduct violated Model Rule 3.4(c), which requires that a lawyer not knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists, since his conduct in continuing the pursuit of the *Hubbs* appeal, despite the decision in *Henson*, was found to be a violation of Rule 11 of the Rules of Appellate Procedure – Civil.

Third, the Committee also found that Mr. Stilley's conduct violated Model Rule 8.4(d), which requires that a lawyer not engage in conduct that is prejudicial to the administration of justice. The Committee found this rule to have been violated in two respects, to-wit: (i) the orderly and timely administration and resolution of appellate proceedings before the Arkansas Supreme Court were delayed by Mr. Stilley's continued pursuit of a frivolous appeal in *Hubbs*, and, (ii) Mr. Stilley's continued pursuit of a frivolous appeal before the Arkansas Supreme Court required that court to expend additional time and effort which would not have been necessary otherwise.

Committee Docket No. 2001-060

On October 1, 2001, the Committee SUSPENDED Mr. Stilley from the practice of law for a period of thirty days finding five violations of the Model Rules.

First, the Committee found that Mr. Stilley violated Model Rule 1.2(a), which requires, in pertinent

part, that a lawyer abide by a client's decisions concerning the objectives of representation and abide by a client's decision whether to accept an offer of settlement of a matter, when he pursued an appeal of judgment, although his former client, John Speed, did not wish to pursue such an appeal, and when he failed to inform Mr. Speed of a settlement offer made by opposing counsel, thereby denying Mr. Speedy the opportunity to decide whether to settle.

Second, the Committee also found that Mr. Stilley violated Model Rule 1.16(a), which requires, in pertinent part, that a lawyer not represent a client if the lawyer is discharged, when he continued to pursue an appeal on behalf of Mr. Speed even though Mr. Speed had discharged Mr. Stilley from representing him and had obtained a Court Order substituting another lawyer to be his counsel.

Third, the Committee also found that Mr. Stilley's conduct violated Model Rule 3.7 which requires, in pertinent part, that a lawyer not act as an advocate at a trial in which the lawyer is likely to be a necessary witness, when he continued to act as an advocate for himself and Mr. Speed in a lawsuit brought against them even though he was a necessary witness.

Fourth, the Committee also found that Mr. Stilley's conduct violated Model Rule 8.4(c), which requires that a lawyer not engage in conduct involving dishonesty, fraud, deceit or misrepresentation, when he filed a Notice of Appeal indicating that Mr. Speed wanted to pursue an appeal even though he did not; and when he misled the Appellate Court that Mr. Speed desired

> an appeal by tendering the record to the Clerk of the Arkansas Supreme Court.
>
> Fifth, the Committee also found that Mr. Stilley's conduct violated Model Rule 8.4(d), which also requires that a lawyer not engage in conduct that is prejudicial to the administration of justice, because Mr. Stilley did not promptly pay a judgment entered against Mr. Speed pursuant to an indemnity agreement Mr. Stilley prepared and executed, despite a demand by Mr. Speed and opposing counsel, and despite having access to sufficient funds to pay the judgment.
>
> Opposing counsel had to file a declaratory judgment action on the indemnity agreement, and prevail on Mr. Stilley's appeal to the Arkansas Supreme Court, thereby causing the State Circuit Court and the Arkansas Supreme Court to unnecessarily expend judicial resources on the issue.

Committee Docket No. 2001-001. Mr. Stilley also pursued this particular matter in federal court, but ultimately received only further admonition. On September 17, 2001, Mr. Stilley filed in his own name in the U.S. District Court for the Western District of Arkansas a complaint for malicious prosecution and abuse of process. The district court dismissed the complaint with prejudice, finding it to be virtually identical to a previous (counter) claim Mr. Stilley had filed in state court, which the state court had found was barred by the doctrine of *res judicata. James, et al, v Oscar Stilley and John Speed,* case No. 2000-96 G (Sebastian County Cir. Ct., 1997) (sometimes referred to in the submissions as "James II"). The district court found Mr. Stilley's claim for malicious prosecution in federal court to be barred by *res judicata* as well. *Stilley and*

James, et al., Opinion and Order, Civil No. 01-2228, WD Ark., 2/26/02.

The district court, on its own initiative, then ordered Mr. Stilley to show cause why certain conduct in the federal case was not a violation of Rule 11(b), FRCivP. *Id.*, Order to Show Cause dated 4/2/2002. Following a hearing on the Order to Show Cause, the district judge made the following findings:

> The Plaintiff, Oscar Stilley, filed and served a complaint in this case which set forth claims that were barred by the effects of the principals (sic) of *res judicata* and/or collateral estoppel, and were not warranted by existing law or by a non-frivolous argument for the modification of existing law. Mr. Stilley also filed and served a motion to recuse and to alter or amend the judgment, (Doc. #21), which was not based upon legal contentions warranted by existing law or by a non-frivolous argument for the modification of existing law. By filing these pleadings, Mr. Stilley violated Rule 11(b)(2) of the Federal Rules of Civil Procedure.2/
>
> It is proper to impose sanctions against Mr. Stilley in order to deter repetition of the conduct which has violated Rule 11.
>
> > 2/ Recently, in an action unrelated to this case, the Arkansas Supreme Court ordered Mr. Stilley to show cause in writing why a sanction should not be imposed against him, stating "we are, once again, troubled by Mr. Stilley's unwillingness to recognize precedent and his attempt to breathe life into decisions he previously lost." *White v*

> *Priest,* ___ S.W. 2d ___, 2002 WL 535793 (April 10, 2002) (citation omitted).

The federal district court then permanently enjoined Mr. Stilley from filing related new actions in any state or federal court. Order, *Stilley v James,* Civil No. 01-2228, U.S. WD Ark., , May 1, 2002.

Mr. Stilley appealed to the U.S. Court of Appeals for the Eighth Circuit. On September 30, 2002, a three judge panel in a per curiam decision affirmed the district court in all respects. The appellate court noted that the issue giving rise to the Rule 11 sanctions had been litigated or raised for litigation in three lawsuits and two appeals. "The district court acted appropriately by helping Stilley stop pursuing further litigation." *Stilley v James, et al.,* No. 02-2047/2202 (8th Cir.).

Mr. Stilley was not persuaded by the Eighth Circuit's opinion and petitioned for a rehearing by the panel and for a rehearing *en banc.* The Eighth Circuit denied both requests without further comment. Order Denying Petition for Rehearing and for Rehearing *En Banc, Stilley v James, et al.,* 02-2047/2202 (8th Cir., 11/12/02). Mr. Stilley, however, has now pursued further litigation. He informed this panel he is back in state court seeking to reopen the matter based upon allegations of perjury.

The last of the four orders referred to by Judge Quist was entered on n [sic] October 17, 2001, when Mr. Stilley was REPRIMANDED by the Committee for at least eight more violations of the Model Rules.

> First, the Committee found that Mr. Stilley violated Model Rule 1.1, which requires that a lawyer provide competent representation to a client

including the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation, when he failed to be thorough enough in his representation of a Mr. Scamardo to ensure that all deadlines set by the Scheduling Order in the lawsuit he filed on Mr. Scamardo's behalf were met.

Second, the Committee also found that Mr. Stilley's conduct violated Model Rule 1.3, which requires that a lawyer act with reasonable diligence and promptness in representing a client, when he failed to file timely discovery requests on Mr. Scamardo's behalf.

The Committee also apparently found Mr. Stilley to be in violation of the same rule when he failed to file a timely lawsuit for the residents of Fort Smith who wished to challenge the validity of their 1996 taxes payable in 1997.

Third, the Committee also found that Mr. Stilley violated Model Rule 1.4(a), which requires that a lawyer keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information, when he failed to keep Mr. Scamardo informed about the status of his lawsuit.

Fourth, the Committee also found that Mr. Stilley's conduct violated Model Rule 3.1, which requires, in pertinent part, that a lawyer not bring a proceeding, or assert an issue therein, unless there is a basis for doing so that is not frivolous, which includes a good-faith argument for an extension, modification or reversal of existing law, when he included allegations in a lawsuit entitled *Chapman v Bevilacqua, et al,* concerning practices of the City of Fort Smith,

even though the City was not a party to the action.

The Committee also apparently found Mr. Stilley to be in violation of the same rule when he continued to pursue an action against tax officials of the Fort Smith District of Sebastian County on behalf of Earl Oxford, even though Mr. Oxford was a taxpayer of the Greenwood district of Sebastian County, a separate taxing district, and this venue problem had been timely brought to Mr. Stilley's attention.

Fifth, the Committee also found that Mr. Stilley violated Model Rule 3.2, which requires that a lawyer to make reasonable efforts to expedite litigation consistent with the interests of his client, when he failed to file the lawsuit on behalf of the named Fort Smith taxpayers before the issue became moot because the taxes had already been voluntarily paid.

Sixth, the Committee also found that Mr. Stilley violated Model Rule 3.3(a)(1), which requires, in pertinent part, that a lawyer not make a false statement of material fact to a tribunal, when he mistakenly averred to the Court that a Mr. Bruce gave him consent or permission to file a lawsuit on his behalf by listing Shelly Bruce as a plaintiff in an action he filed.

Seventh, the Committee also found that Mr. Stilley's conduct violated Model Rule 4.4, which requires, in pertinent part, that in representing a client a lawyer not use means that have no substantial purpose other than to embarrass, delay or burden a third person, when he included allegations in a case entitled *McCutchen v Patton, et al,* about city officials of Fort Smith and the

> Multi-Ethnic Commission concerning the use of a $20,000 appropriation which were baseless, and when he included allegations concerning the spending and taxing practices of the City of Fort Smith, a non-party to the action.
>
> Eighth, the Committee also found that Mr. Stilley violated Model Rule 8.4(c), which requires that a lawyer not engage in conduct involving dishonesty, fraud, deceit or misrepresentation, when he filed a lawsuit listing Shelly Bruce as a party that Mr. Stilley represented, without securing either written or direct oral permission from Mr. Bruce to do so, and instead relied on the representations of a third party as to Mr. Bruce's permission.

Prior to a public hearing on the violations contained in the fourth order, "Mr. Stilley approached the Executive Director with a proposal for discipline by consent. The proposal, as reflected by this Order [of the Committee] and approved as to form, was presented to the Committee, with the concurrence of the Executive Director, and was approved by the Committee." Findings and Consent Order of the Committee in Docket No. 2001-006 filed October 17, 2001.

As noted, all of the violations of the Model Rules listed above were contained in four separate proceedings before the Committee. At the hearing on his petition in this court, Mr. Stilley indicated he had had the right to appeal any of these four proceedings to the Arkansas Supreme Court, but that he had chosen not to do so.[1]

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[1] The panel was informed by petitioner that he has also received a couple of warning letters from the Committee regarding other matters,

(Continued on following page)

Certificate of Good Standing

In support of his Petition for Admission, Mr. Stilley submitted a Certificate of Good Standing from the Arkansas Supreme Court, dated October 2, 2003. In the Certificate, the Clerk of the Court by a deputy certifies that:

> Oscar Stilley was enrolled as an Attorney at Law and Solicitor in Chancellery by the Supreme Court of this state on April 15, 1991; that no disbarment proceedings have been filed against him in this court, that he has not had any adverse disciplinary action whatsoever during the past three year period, and that his private and professional character appear to be good.

Upon questioning by this panel, Mr. Stilley conceded that the Certificate he had presented appeared flawed on its face, since he had certainly experienced disciplinary action during the three years immediately preceding October 2003.

The Certificate also stated that the seal of the Arkansas Supreme Court has been affixed to it, but in fact no seal was apparent.

Following the hearing, the panel received, unsolicited, a new Certificate of Good Standing from the Arkansas Supreme Court, dated January 12, 2004, which had been obtained by the U.S. Attorney's Office. This certificate does bear the seal of the court, but the following words have been stricken:

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and he states these letters cannot appealed. The panel has decided these letters need not be considered.

> "that he has not had any adverse disciplinary action whatsoever during the past three year period, and that his private and professional character appear to be good."

The U.S. Attorney's Office also sent a copy of the new Certificate to Mr. Stilley on January 13, 2004, who has to this date filed nothing in response to it. Although Mr. Stilley sent a letter concerning his Petition generally to the Chief Judge of this court on January 20, 2004, he made no mention of the new Certificate in the letter. Presumably, Mr. Stilley does not object to the panel considering the new Certificate rather than the one originally offered.

Discussion

In affording a dissatisfied petitioner for admission a hearing before the court, the panel is to follow the hearing procedure set forth in Local Criminal Rule 57.1(m)(iii).[2] At the hearing, "the attorney shall have the burden of demonstrating by clear and convincing evidence that:

(1) the attorney has complied with the orders of discipline of this court and all other disciplinary authorities;

(2) the attorney has not practiced in this court during the period of disbarment or suspension and has not practiced law contrary to any other order of discipline;

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[2] A parallel provision is found in Local Civil Rule 83.1.

(3) the attorney has not engaged in any other professional misconduct since disbarment or suspension;

(4) the attorney has the moral qualifications, competency and learning in the law required for admission to practice law before this Court; and

(5) the attorney's resumption of the practice of law will not be detrimental to the integrity and standing of the bar or to the administration of justice, or subversive of the public interest."

Petitioner agreed at the hearing that it is not the function of this panel to reevaluate the merits of the disciplinary actions taken against him in his home jurisdiction. The panel gave Mr. Stilley the opportunity to review some of these rule violations (he chose not to address all of them) to provide some context for them from Mr. Stilley's perspective and to help the panel determine the sufficiency of the proceedings in Arkansas. But where, as here, these Findings and Orders appear fully explained and proper on their face, and have not been appealed by Mr. Stilley (indeed, the most recent reprimand was entered with his consent), and it does not appear Mr. Stilley was denied due process by the Arkansas authorities, this court will accept as final and valid the four Findings and Orders of the Arkansas Supreme Court Committee on Professional Conduct. It is the policy of this court, as manifested in its various rules, to give reciprocity to the disciplinary actions of other jurisdictions. See, for example, W.D. Mich. LCivR 83.1(m) and W.D. Mich. LCrR

57.1(m), pertaining to discipline by other jurisdictions; see also, Michigan Court Rule 9.104(B):[3]

> Proof of an adjudication of misconduct in a disciplinary proceeding by another state or United States Court is conclusive proof of misconduct in a disciplinary proceeding in Michigan. The only issues to be addressed in the Michigan proceeding are whether the respondent was afforded due process of law in the course of the original proceedings and whether imposition of identical discipline in Michigan would be clearly inappropriate.[4] (emphasis added)

Thus, it becomes the obligation of Mr. Stilley to show by clear and convincing evidence that, in light of a rather lengthy list of professional rule violations, his practice of law in this district will not be detrimental to the integrity and standing of the bar of this court, or to the administration of justice or subversive to the public interest in this district.

Petitioner has failed to meet this obligation in several respects. First, the disciplinary record of the petitioner in his home state has been extensive in length, and disciplinary proceedings are ongoing. He has been found to have been in violation of the Model Rules of Professional Conduct of that jurisdiction approximately twenty times.

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[3] An attorney admitted to the bar of this court subjects himself or herself to the Michigan Rules of Professional Conduct and the disciplinary procedures prescribed by the State of Michigan for all attorneys. See, W.D. Mich. LCivR 83.1(j); W.D. Mich. LCrR 57.1(j).

[4] As indicated, there has been no showing of a lack of due process regarding the disciplinary actions discussed above. Moreover, the discipline imposed certainly seems commensurate with the violations established.

Frankly, the members of the panel cannot recall any other applicant to the bar of this court having had anything approaching twenty rule violations. Moreover, these violations are relatively recent and arise from several different cases. Petitioner has failed to show why accepting one with this disciplinary record would not be damaging to the integrity and standing of the bar, since to do so would send a message to the bar and to the public that this court tacitly countenances petitioner's apparent inability to conform his practice to well recognized rules. This court would not tolerate this level of conduct from its present members. By accepting this petition, the court would be effectively lowering the standard to which it holds all attorneys who appear before it.

Nor has petitioner shown that his admission would not be detrimental to the administration of justice if his present conduct continues. The harm could be immediate or long term. For example, were petitioner again suspended from practice in Arkansas, but this time while representing a client in this court, his suspension would directly impact the proceedings in this court, due to the reciprocity this court affords disciplinary actions in other jurisdictions.

On the other hand, petitioner's involvement in a criminal proceeding might well set the stage for allegations of ineffective assistance of counsel down the road were petitioner to represent a criminal defendant who was eventually convicted. The rule violations the Arkansas authorities have determined that petitioner has committed would be highly prejudiced in a criminal setting. For example, Arkansas has determined that Mr. Stilley failed to file a record in a timely manner, and on a separate occasion failed to file a timely lawsuit; that he filed a

frivolous appeal; that he pursued an appeal on behalf of a client who did not wish to pursue that appeal, and who had in fact discharged him; that he failed to inform a client of a settlement offer, that he acted as an advocate despite a conflict of interest; that he did not ensure scheduling deadlines were met; and that he did not keep his client informed. Any violations similar in nature to one of these in a federal criminal case where a client Mr. Stilley was defending was convicted, could lead to allegations of ineffective assistance of counsel and a reversal.

Admittedly, one must deal in probabilities when trying to ascertain whether future problems will occur. But here the panel is not faced with a blank slate. Petitioner has an extensive track record. And unfortunately his explanation of it seems in large part an attempt to minimize his deprecations or explain them away, and does little to convince the panel that petitioner fully appreciates where this type of behavior is leading an otherwise bright and articulate lawyer.

Mr. Stilley would like the panel to look past his difficulties to date. He asserted at his hearing that he is making changes for the better, for example, in his office procedures. Unfortunately, it appears that his difficulties with the Committee and the Arkansas Supreme Court are not over. On May 17, 2002, the Supreme Court of Arkansas entered an Order striking a brief Mr. Stilley had filed in that court. Order Entered Striking Brief, *White v Priest, et al,* No. 02-284, May 17, 2002. In its order, the Supreme Court began by stating that, "[i]n view of Mr. Stilley's continued strident, disrespectful language used in his pleadings, motions and arguments, and his repeated refusal to recognize and adhere to precedent, Mr. Stilley's 70-page brief should be stricken entirely." The court then

set forth a dozen paragraphs from Mr. Stilley's brief which it cited as "examples of the general tone of disrespect for the code of ethics and Mr. Stilley's breach of his oath of office as an attorney at law. That disrespect for the court pervades Mr. Stilley's brief." The court went on to state that it found "Mr. Stilley's intemperate and distasteful language spread throughout all of his brief." "We conclude that Mr. Stilley's brief is an inexcusable breach of the obligation of professional conduct that this court expects of the members of the bar". The Supreme Court finished by directing that all copies of Mr. Stilley's brief be stricken in their entirety from the files of that court. The Supreme Court referred Mr. Stilley to the Professional Conduct Committee, to take whatever action the latter believed Mr. Stilley's actions warranted under the Model Rules of Professional Conduct, where the matter continues to linger to this day.[5]

Finally, the court is concerned with what appears to be petitioner's lack of understanding and/or disregard of precedent, as indicated by the several courts that have found it necessary to chastise Mr. Stilley for his inability to accept rulings based on *res judicata*. See, Order of Judge Dawson dated May 1, 2002, *supra*; per curium decision of the United States Court of Appeals for the Eighth Circuit filed September 30, 2002, *supra*; *White v*

[5] Mr. Stilley indicated to this court that he attempted to depose the members of the Arkansas Supreme Court as part of this proceeding, but that the Court had quashed his subpoenas. He also indicated he has recently filed a federal lawsuit against the Justices of the Arkansas Supreme Court, both in their official and individual capacities, which is presently pending. According to a January 20, 2004 letter petitioner sent to the court, discussed *infra*, petitioner has apparently also moved to recuse the Justices in an unrelated case.

Priest, ___ S.W. 2nd ___, 2002 WL 535793 (April 10, 2002), *supra*. Petitioner also informs the court that in a case from the Sebastian, Arkansas, Circuit Court, he was sanctioned under Rule 11 and ordered to pay attorney's fees to the defendant government agencies. Here again, according to petitioner, "the primary and decisive matter was *res judicata*. I claimed that my client was not bound by *res judicata* . . . " The Arkansas Supreme Court affirmed the sanctions against Mr. Stilley.[6] Mr. Stilley moved for rehearing and moved for recusal of the sitting Justices on rehearing. These motions are pending. Letter from petitioner to Chief Judge Bell, dated January 20, 2004. Petitioner's refusal or inability to conform his practice to generally accepted principles of law directly impacts the administration of justice.

A Litigant's Constitutional Right to Counsel of Choice

Mr. Stilley contends that a defendant in a criminal case pending in this court wants him to represent her. This is the reason for his petition. Assuming, *arguendo*, this to be the case, and while it is true that there is a constitutionally based right to counsel of choice, it is well established that the right is not absolute. *Wheat v United States*, 486 U.S. 153, 159 (1988) ("the Sixth Amendment right to choose one's own counsel is circumscribed in several important respects. Regardless of his persuasive powers, an advocate who is not a member of the bar may not represent clients (other than himself) in court."); *United States v Dinitz*, 538 F.2d 1214, 1219 (5th Cir. 1976)

[6] It appears from the case number in the Arkansas Supreme Court (03-261) that the sanctions were affirmed in 2003.

(en banc) (recognizing a Sixth Amendment right to counsel in a criminal case, but only a limited right to counsel of choice, and affirming the disqualification of counsel on account of misconduct impeding the orderly administration of justice); *see also, McCuin v Texas Power & Light Company*, 714 F.2d 1255, 1262, n. 21 (5th Cir. 1983) ("while the right to counsel is fundamental, there is no absolute right to a particular lawyer," citing *Dinitz*). When a defendant is denied the counsel he prefers, the constitutional concern is whether he receives an effective advocate. *Wheat,* 486 U.S. at 159. If he does receive effective assistance of counsel, the denial of his choice of attorney does not violate his constitutional rights. *Id.*

Accordingly, a litigant's freedom to hire the lawyer of his or her choice can be overridden if a court finds that the choice would interfere with the orderly administration of justice. *In Re: Bell South Corporation,* 334 F.3d 941 (11th Cir. 2003); *Dinitz,* 538 F.2d at 1219; *Panzardi-Alvarez v United States*, 879 F.2d 975, 980 (1st Cir. 1989). "There is some point short of allowing a defendant complete freedom in choosing his own counsel at which the Sixth Amendment's prescription is satisfied. To hold otherwise would necessarily condemn, for example, even local bar admission requirements, and no one would seriously maintain that the Sixth Amendment requires that" *Dinitz,* 538 F.2d at 1219. In short, a criminal defendant's preference for a particular attorney does not mandate this court disregard its reasonable bar admission requirements.

Conclusion

Petitioner's string of disciplinary proceedings in Arkansas has raised legitimate concerns about the detrimental

effect his admission to practice in this district may have. Petitioner has not dispelled these concerns; he has not demonstrated over an adequate period of time that these problems are truly a thing of the past rather than part of a continuing pattern of behavior. Petitioner has failed to satisfy his burden under the rule and therefore his petition for admission will be DENIED.

Dated: January 27, 2004 /s/ Robert Holmes Bell
ROBERT HOLMES BELL
CHIEF U.S. DISTRICT JUDGE

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

ANDREW OUWENGA AND KAREN OUWENGA,

Defendants. /

Case No. 1:03-CR-00212
HON. DAVID W. McKEAGUE

ORDER DENYING MOTION FOR ADMISSION PRO HAC VICE

(Filed Nov. 5, 2003)

Counsel Oscar Stilley having moved for *pro hac vice* admission, on behalf of defendant Karen Ouwenga, pursuant to W.D. Mich. L. Crim. R. 57.1(e); and

The Court having reviewed the motion and W.D. Mich. L. Crim. R. 57.1(c)(iii) and noting that the rule disfavors pro hac vice admission unless unusual circumstances warrant such admission; and

The Court noting that defendant Karen Ouwenga is currently represented by other counsel; and

Counsel Stilley making only a bald assertion that this case entails unusual circumstances but providing no explanation of those unusual circumstances; and

The Court not otherwise finding that pro hac vice admission is warranted; now therefore,

IT IS ORDERED that attorney Oscar Stilley's motion for admission pro hac vice is **DENIED**.

Dated: November 5, 2003 /s/ David W. McKeague
DAVID W. McKEAGUE
UNITED STATES
DISTRICT JUDGE

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN

IN RE:	ATTORNEY DISCIPLINE AS TO ATTORNEY OSCAR A. STILLEY /	ADMINISTRATIVE ORDER No. 03-049

An application for admission to this Court was filed by Attorney Oscar A. Stilley, of Fort Smith, Arkansas. On November 5, 2003, Honorable Gordon J. Quist denied Mr. Stilley's admittance as the judge having the initial responsibility for making decisions regarding applications to the bar of the Western District of Michigan. Mr. Stilley filed a petition for review with this judge as chief judge of the United States District Court for the Western District of Michigan on November 26, 2003, requesting review by a three judge panel.

NOW THEREFORE, a three judge panel is hereby appointed to preside over a show cause hearing and all matters concerning this grievance. The three judge panel will consist of Judge David W. McKeague as chair, Bankruptcy Judge Jo Ann C. Stevenson, and Magistrate Judge Hugh W. Brenneman.

Date: December 15, 2003

/s/ Robert Holmes Bell
ROBERT HOLMES BELL
CHIEF UNITED STATES
DISTRICT JUDGE

No. 04-1283

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

IN RE: OSCAR AMOS STILLEY,	)	ORDER
	)	(Filed Mar. 9, 2006)
Petitioner.	)	

BEFORE: NELSON and BATCHELDER, Circuit Judges; and O'MALLEY,* District Judge.

The court having received a petition for rehearing en banc, and the petition having been circulated not only to the original panel members but also to all other active judges of this court, and no judge of this court having requested a vote on the suggestion for rehearing en banc, the petition for rehearing has been referred to the original panel.

The panel has further reviewed the petition for rehearing and concludes that the issues raised in the petition were fully considered upon the original submission and decision of the case. Accordingly, the petition is denied.

ENTERED BY ORDER
OF THE COURT

/s/ Leonard Green
Leonard Green, Clerk
[/s/ illegible]

* Hon. Kathleen McDonald O'Malley, United States District Judge for the Northern District of Ohio, sitting by designation.